
OPINION OF THE PUBLIC ACCESS COUNSELOR

HOLLY HAYS
Complainant,

v.

INDIANA DEPARTMENT OF CHILD SERVICES
Respondent.

Formal Complaint No.
21-FC-46

Luke H. Britt
Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana Department of Child Services (DCS) violated the Access to Public Records Act.¹ DCS Deputy General Counsel Rachel Russell responded on behalf of the agency. General Counsel Joel McGormley provided a supplemental response. In accordance with Indiana Code § 5-

¹ Ind. Code § 5-14-3-1-10.

14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on April 15, 2021.

BACKGROUND

This case involves the denial of an audit of a subcontractor conducted by a vendor of the Indiana Department of Child Services (DCS).

On December 8 and 11, 2021, Complainant Holly Hays, a reporter with the Indianapolis Star requested the following from DCS:

[A] copy of the audit provided to DCS by Redwood Toxicology and Tomo Drug Testing.

Hays indicated the audit would have been prepared and delivered to DCS in mid-November.

The records request was denied on March 19, 2021 based upon Indiana Code section 31-33-18-1 which makes confidential the investigation and reporting documentation of child abuse and neglect cases.

Hays disagrees with the application of the statute and the complaint was filed on April 15, 2021.

DCS responded to the complaint by arguing the statute does indeed apply to the audit as it is a report in the possession of DCS and therefore falls squarely into the confidentiality provision of Indiana Code section 31-33-18-1. The initial response did not argue why the statute applies – only that it does. For clarification, the public access counselor reached out to DCS and obtained an explanation. It claims the document in question is not an audit in terms of an administrative

analysis of operations, but rather simply a list of specific case names identifying individuals. No aggregate, summary or statistical data was contained – only a list of names.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Indiana Department of Child Services (DCS) is a public agency for purposes of APRA; and therefore, subject to the law’s requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy DCS’ public records during regular business hours. Ind. Code § 5-14-3-3(a).

2. Confidentiality of DCS Reports

For context, based on media reports, the audit in question involves the possible mismanagement of a DCS vendor’s subcontractor when conducting drug testing. It is unclear what direct involvement DCS had in the development of the audit, however, they did receive it therefore making it a public record by definition pursuant to Indiana Code section 5-14-3-2(r) (“material that is created, received, retained, maintained, or filed by or with a public agency”).

Arguably the public has a vested interest in scrutinizing the allegedly fraudulent activities of a public agency's vendor's subcontractor, but within the bounds of any statutory considerations.

While APRA itself does not list every single conceivable type of record and the confidentiality provisions thereof, APRA does except from disclosure any material that is declared confidential by any other state or federal statute. Ind. Code § 5-14-3-4(a)(1).

To wit, Indiana Code section 31-33-18-1 declares confidential the following records:

- (1) Reports made under this article (or IC 31-6-11 before its repeal).
- (2) Any other information obtained, reports written, or photographs taken concerning the reports in the possession of:
 - (A) the division of family resources;
 - (B) the local office;
 - (C) the department; or
 - (D) the department of child services ombudsman established by [IC 4-13-19-3](#).

This Article includes a broad range of materials related to the individual child abuse and neglect case investigation process. It includes assessments of each case and materials supplemental thereto. Interestingly enough, the statute makes the reports themselves confidential and does not leave much room to interpret redactions as a possibility for disclosure.

Therefore, it is imperative to determine what material is contemplated by this statute. Subsection (a)(1) establishes that the reports in question are ones created under Article 33: *Juvenile Law: Reporting and Investigation of Child Abuse and Neglect*.

Subsection (a)(2), the portion of the law directly cited by DCS in its formal complaint response to this office, appears to broaden the confidentiality provisions of Subsection (a)(1) to include any other information concerning those reports.

This office agrees that any documentation of reporting and investigation containing identifying information regarding child abuse and neglect should be shielded from disclosure based upon the plain meaning of the statute and for policy reasons.

Based upon a multitude of other sections of the Indiana Code, the legislature intends administrative business documents related to public contractor's performance to be disclosable public record for transparency and accountability purposes. However, in the instant case, that does not appear to be what the document actually is.

Based upon DCS' response, the audit is not really a true audit in terms of an examination of a business practice, but simply a list of potentially compromised cases.

This office has not had the opportunity to review the record, making it a virtual impossibility to make a conclusive determination, but DCS has carried its burden to argue that a list of cases and names falls within the statute and

should not be disclosed. To the extent the report is just that, DCS may withhold it in its entirety.

CONCLUSION

Based on the foregoing, it is the opinion of the public access counselor that documents expressly referencing identifying names and cases in the possession of the Department of Child Services are confidential pursuant to Indiana Code section 31-31-18-1(a)(2).



Luke H. Britt
Public Access Counselor